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STATE FOR WHA/CAN AND EB
STATE PASS USTR FOR AMBASSADOR SCHWAB, JIM MENDENHALL, JOHN
MELLE, AND SAGE CHANDLER
COMMERCE FOR ASSISTANT SECRETARY DAVID SPOONER AND JIM
TERPSTRA

E.O. 12958: N/A
TAGS: [ETRD](#) [PREL](#) [ECON](#) [EAGR](#) [CA](#) [CH](#) [KS](#)
SUBJECT: VISIT OF USTR AMBASSADOR SUSAN SCHWAB TO OTTAWA,
SEPTEMBER 11-12, 2006 - SIGNATURE OF U.S.-CANADIAN SOFTWOOD
LUMBER AGREEMENT

REF: A. STATE 147265

[1](#)B. OTTAWA 2688
[1](#)C. OTTAWA 2439 (ALL NOTAL)

[1](#)1. (SBU) Summary: USTR Ambassador Susan Schwab visited Ottawa on September 11-12 to sign the U.S.-Canadian Softwood Lumber Agreement, which will be voted on by the Canadian Parliament during the week of September 18. Prior to the signing ceremony at the Department of Foreign Affairs and International Trade (DFAIT), she was the guest of honor at a lunch hosted by Minister of International Trade David Emerson at which there was a tour d'horizon on trade and related topics. The two ministers exchanged views on implementation of the Softwood Lumber Agreement, joint work on regional trade initiatives, trade with Korea and China, intellectual property rights (IPR), the U.S. imposition of APHIS fees on passengers and cargo crossing the U.S. border from Canada and related issues, ITAR, and BSE. Ambassador Schwab later met privately with Minister Emerson and Industry Minister Bernier. Embassy Comment: Ambassador Schwab's signature of the Softwood Lumber Agreement, after several years of discussion and periodic negotiations, marked the end of a highly contentious and long standing irritant in U.S.-Canadian relations. End Comment and Summary.

[1](#)2. (U) On September 12, Ambassador Schwab was hosted at lunch by International Trade Minister David Emerson and colleagues from DFAIT. USTR General Counsel Jim Mendenhall, Commerce Assistant Secretary for Import Administration David Spooner, USTR, and USDOC officials also attended the meal. The Embassy was represented by Ambassador Wilkins and Economic Minister-Counselor Mohler (notetaker).

Softwood Lumber

[1](#)3. (SBU) Minister Emerson outlined the GOC's timetable for implementing the softwood lumber agreement. When the Canadian Parliament returns after its summer recess on September 18, the Harper government will immediately introduce a "Ways and Means" motion to move forward on the export tax part of the agreement. There will be a vote on the Motion within 24 hours. Once tabled, the Motion cannot be amended; it can only be adopted on an up-or-down vote. If the Motion is adopted, the government would quickly introduce

legislation that conforms to the proposal in the Ways and Means Motion. The bill would have to go through the usual legislative procedure (first, second, third reading with referral to a committee). Regardless of how long this process takes, the government would be able to impose the tax immediately so that the agreement would go into effect by the anticipated October 1 date. As of now, Emerson said that 92% of Canadian companies have signed up to receive refunds under the agreement. Embassy Comment: Passage of the Ways and Means Motion appears assured since the Bloc Quebecois (BQ) has announced that it will support the Harper government. The BQ votes will give the Conservatives enough votes to overcome opposition from the Liberal and New Democratic Parties. End Comment.

Trade

14. (SBU) Ambassador Schwab briefed Minister Emerson on the results of last weekend's Rio meeting of the G-20 Trade Ministers, where the main topic was resumption of the Doha Development Round negotiations, which were in July.

15. (SBU) Minister Emerson said that Canada is keen on moving ahead on sectoral initiatives to broaden NAFTA, in areas such as swine, electricity, steel, and chemicals (a particular interest of Mexico). He asked about U.S. interests in this regard. If the Doha Round fails, Emerson felt that Canada could find itself marginalized in trade since it does not have sufficient geopolitical clout to prevent discrimination in third-country markets. In order to compete with China and other major trading blocs, he said that North American competitiveness depends on more standardized rules of origin.

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Korea

16. (SBU) Minister Emerson acknowledged that Canada is making little progress in its free trade agreement (FTA) negotiations with South Korea, which rejected Canada's most recent substantive offer. Moreover, there is serious pressure against a Korean FTA from the Canadian auto industry. The Minister admitted that he needs to show that free trade with Korea would be a win for Canada.

17. (SBU) Ambassador Schwab noted that U.S., Canada and Korean trade officials will focus on the auto sector during their meeting next week in Toronto. Korean President Roh will also see President Bush later this week. She said that the most recent round in the U.S.-Korean FTA talks in Seattle did not result in any breakthroughs, either. Schwab agreed that Canada and the U.S. should work together on their respective FTA negotiations with Korea. Both governments should also discuss in more detail the promotion of sectoral initiatives in the context, not only in North America, but also in the Western Hemisphere.

18. (SBU) Deputy Trade Minister Morin pointed out that Canada hosted Mexican trade officials recently in Vancouver. A follow-on meeting is possible in Mexico in November, but substantial progress would await the formation of the new Calderon government which takes office in December.

China

19. (SBU) Ambassador Schwab noted that Canada would join the U.S. in announcing our WTO case on auto parts in China. She had had productive meetings in China last month and gave the PRC public and private credit for progress that they are making on some trade issues, but she also noted problem areas such as subsidies and intellectual property rights remain.

There was no progress on the auto parts issue. More generally, Schwab believed that China needs to stand up for the Doha Development Round given its increasing stake as a major player in global trade, but she found officials to be more focused on preparations for the next party congress.

¶10. (SBU) Minister Emerson noted that Canada has its own IPR issues with China, but he expect Beijing to become more vigorous in preserving IPR since it is now developing products worth protecting. Schwab agreed that the Chinese understand this in principle, but they still fall down on IPR enforcement.

IPR

¶11. (SBU) Minister Emerson said that Canada is looking at amending its Copyright Law, including addressing technical protection measures and ISP issues, although he doubted that the GOC would go as far as adopting the "notice and takedown" approach advocated by the U.S. He assured Ambassador Schwab that Canada maintains a strong commitment to taking anti-piracy measures and effective enforcement at the border.

The new legislation, which is still under development, should be "a little stronger" than the C-60 bill which was introduced by the former Liberal government. Regarding the U.S. request for Canada to join in a possible WTO case against China on IPR, Emerson said that the GOC is consulting with private stakeholders. He noted, however, that such a case could cause legal issues with the Canadian Charter of Qcase could cause legal issues with the Canadian Charter of Rights and Freedoms, which is akin to the U.S. Bill of Rights. Ambassador Schwab stressed that violation of intellectual property rights is a very serious issue for the U.S.

APHIS Fees

¶12. (SBU) Minister Emerson articulated Canada's strong concerns with the recent U.S. announcement that it would start to impose APHIS fees on cargoes and passenger traffic crossing the border starting later this year. He urged the

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U.S. to "back off" this proposal because of the "incredible backlash" it is causing in Canada: "Please make it go away."

Emerson claimed that Canada had been blindsided by the news, which, he said, is hampering the Harper government's efforts to improve relations with the U.S.

¶13. (SBU) Ambassador Schwab said that she has discussed the issue with U.S. Agriculture Secretary Johanns, who pointed out the increased expense in dealing with cross-border phytosanitary issues such as BSE. She promised to convey Emerson's concerns to Secretary Johanns, but could not promise that the fee proposal would be rescinded. However, Schwab agreed that it would be important that any fee be levied in such a way as to minimize its impact on the cross-border trade. She praised the close cooperation between APHIS and its Canadian counterpart agency, the Canadian Food Inspection Agency (CFIA). Ambassador Wilkins noted that the APHIS fee, in combination with the Western Hemisphere Travel Initiative (WHTI), is seen by Canadians as "piling on." Ambassador Schwab replied that she had received the Canadian message of discontent clearly and stressed that the impact of the fee should be "invisible."

Crossing the Border

¶14. (SBU) Deputy Minister Morin agreed with Ambassador Wilkins' characterization of Canadian perceptions. She noted that the new North American Competitiveness Council (NACC), the private sector component of the Security and Prosperity Partnership (SPP), hopes to address the need for the border

to be predictable. Schwab agreed. Morin pointed out that there has been a recent reduction in border crossings by Americans traveling to Canada. Ambassador Wilkins added that cross-border traffic is being deterred by high gasoline prices and the strong Canadian dollar. Speaking personally, Minister Emerson, who lives in British Columbia, said that he would be less likely to spend a weekend playing golf in Washington State because of the long lines of cars at the Blaine border crossing. He thought that all these factors serve to discourage Canadians and Americans from making spontaneous trips across the border for shopping and sporting events as they had done in the past. On the positive side, Ambassador Wilkins observed that air travelers in Canada are finding their trips to the U.S. expedited by being "pre-cleared" by U.S. CBP officials at major Canadian airports. A new pre-clearance site opens at the Halifax airport in early October.

ITAR

¶15. (SBU) Minister Emerson briefly raised Canadian concerns about the operation of the U.S. ITAR program. He said that Canadians understand how the events of 9/11 have affected U.S. security, but enforcement of ITAR rules is increasingly affecting Canada because of its defense relationship with the U.S. 20% of Canadian defense procurement now comes directly from the U.S. and 20% more comes from the Canadian subsidiaries of U.S. defense companies. He noted that the Harper government intends to spend \$17 billion in defense expenditures over the next decade. Canada will work hard to comply with U.S. ITAR checks, but the requirement for dual nationals working on ITAR-related technologies sometimes causes problems, such as for Canadians who also hold Chinese citizenship. Emerson did not have a solution, but wanted the U.S. to know about the problems the GOC can face in complying with the ITAR regulations.

¶16. (SBU) While admitting that the State Department, not USTR, takes the lead on ITAR within the USG, Ambassador Schwab replied that the regulations can cause frustrations for U.S. companies as well. There needs to be a balance struck. It would be better, she continued, if we could look at issues as if there were a common border surrounding Canada and the U.S., rather than as an issue caused by the Canadian-U.S. border. Emerson agreed. He said that policies such as the WHTI are a "running sore" in the bilateral relationship and are inconsistent with policies to integrate the Canadian and U.S. economies to the maximum extent

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possible. Ambassador Schwab thought that technology will eventually ease such border issues.

BSE

¶17. (SBU) In answer to Minister Emerson's question about the impact of recent Canadian BSE cases, Ambassador Schwab said that USDA is working on a science-based solution to open the border to all Canadian cattle without regard to age. Secretary Johanns told her that USDA is moving to implement

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this policy as soon as possible. She said that such decisions take political will as well as the will to take some risk. Emerson praised the unprecedented flexibility on the part of the U.S. on this sensitive issue. He admitted that Prime Minister Harper has been under a lot of pressure from an often polarized Canadian public in which there are anti-U.S. feelings, but he has always acted in Canada's national interest. Emerson appreciated the fact that the U.S. has ignored similar pressures on its side of the border to stay the course and "do the right thing." Ambassador Wilkins pointed out that leadership matters.

¶18. (SBU) After the lunch, Ambassadors Schwab and Wilkins held private meetings with both Minister Emerson and Industry Minister Maxime Bernier, who could not attend the lunch, but did come to witness the signing of the softwood agreement.

Signing the Softwood Lumber Agreement

¶19. (U) The signing ceremony on the DFAIT roof terrace overlooking downtown Ottawa and the nearby Gatineau Hills took place on a gorgeous early fall afternoon and was well attended by the Canadian press. Ambassador Schwab's statement at the signing:

"Thank you Minister.

"This is a great day - a day that is a long time in the making - and which many people understandably thought would never come.

"With this signing and implementation of this landmark agreement, we hope to bring to a close over 20 years of litigation - and the market instability and political tension that have often accompanied it.

"To reach this agreement, both sides had to compromise and make hard choices - and there is still much work to be done to bring the agreement into force. But once it is operational, this will be a good agreement for the United States, for Canada, and for the relationship between our two countries.

"Canada is the United States' largest trading partner, and it is vital that we keep that relationship strong and growing. Even while this dispute was ongoing, over 96% of our trade with Canada was dispute-free. After this agreement is implemented, over 99% of our trade will be dispute free.

"For those who would criticize this agreement, I ask them to consider the alternatives. Without this agreement, we would see a continuation of litigation - either through continuation of the existing anti-dumping and countervailing duty orders or through the filing of another round of cases. The duties collected as a result of those cases could be substantially higher than those applied under the settlement and would be susceptible to great volatility. Since 2002, the combined duty margins on softwood lumber have ranged from 11% to 27%. If this agreement had been in place over the last ten years, there would have been unrestricted trade for over half the time.

"In place of costly litigation, we will create a predictable and stable market; strengthen the competitiveness of the North American lumber industry; provide a pathway to resolve the policy questions underlying this dispute; bring a little more harmony among neighbors; and provide financial assistance to worthy causes.

"With this agreement, we will have a formal channel - outside the super-heated environment of litigation - to discuss ways to resolve our differences once and for all. Under the terms of the agreement, we will establish a bi-national working group to discuss policies that could eventually result in the elimination of border measures. The commission is expected to

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produce a report within 18 months after the agreement is signed. We have never had that before under any previous lumber agreement.

"With this agreement, almost half a billion dollars will be used to advance low income housing initiatives and disaster relief, to provide community assistance to timber-reliant communities, and to assist in the development of forest management practices that will promote sustainable forestry. Another \$50 million will be disbursed to a bi-national industry council, which will work to build an atmosphere of trust and cooperation, while promoting the integration and strengthening of the industry.

"The United States Government is fully committed to this endeavor. We fully expect that this agreement will have a duration of at least seven to nine years. In fact, it is our

sincere hope that the processes that will be established under the agreement will lead to a permanent solution to a problem that has too long been a distraction in our relationship. We have an historic opportunity and we need to grab it.

"I want to thank the leaders of our two great countries - President Bush and Prime Minister Harper - for their leadership and their unwavering commitment to finding a solution to this longstanding irritant.

"I also want to thank my Canadian colleagues and counterparts, Ambassador Michael Wilson and Minister David Emerson, for their tremendous efforts in concluding this agreement. Their steadfast support has been, and will continue to be, absolutely critical to the success of this undertaking.

"Finally, I want to thank the U.S. negotiating team from USTR and the Department of Commerce, which has put in long hours over many months to negotiate this agreement.

We can all be proud of this tremendous achievement. Let us stay committed to its success.

Thank you."

¶20. (U) Emerson's remarks:

"Canada's New Government today marked another important step toward fulfilling a commitment to resolve the longstanding softwood lumber dispute, signing an agreement with the United States that delivers real results for Canadians.

"Backed by two national governments, all major softwood-producing provinces and an overwhelming majority of Canadian softwood lumber producers, this historic Agreement delivers predictable access to the U.S. market; guarantees the repayment of more than US\$4.4 billion in disputed duties; provides provincial and regional flexibility in forestry policies; and brings an end to years of uncertainty and costly litigation.

"Professionalism, mutual respect and sustained effort have delivered this deal for Canadians. By approaching our most important diplomatic and trading relationship in a rational, workmanlike fashion, we are getting things done for Canadians.

"Today's signing-and the opportunity to begin constructive, new dialogue with Trade Representative Schwab on issues that matter-represents hope that trade irritants, however few there are, can be dealt with in a courteous and professional manner."

¶21. (U) During the press question and answer session following the signing ceremony, Ambassador Schwab rebutted an American trade attorney's claim to a Parliamentary committee QAmerican trade attorney's claim to a Parliamentary committee last month that the US\$450 million Meritorious Initiative would be used as a political slush fund to elect Republicans in the U.S. congressional elections. She characterized such an allegation as "silliness" and stressed that the money will only be spent by non-profit organizations selected after consultations with Canada. The money would be spent in U.S. communities dependent on timber, for low income housing and disaster relief and to promote better forestry practices. Ambassador Schwab also pointed out that the money will not flow until after our elections: "So I think there is no way it will become a political fund."

¶22. (U) The text of the 82 page agreement is at [http://www.dfait-maeci.gc.ca/eicb/softwood/SL A-main-en.asp](http://www.dfait-maeci.gc.ca/eicb/softwood/SL_A-main-en.asp).

¶23. (U) This message has been cleared by USTR and Commerce

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